

admitted.

On the basis of testimony heard and exhibits examined, the Pollution Control Hearings Board prepared Proposed Findings of Fact, Conclusions and Order which were submitted to the appellant and respondent on May 11, 1973. No objections or exceptions to the Proposed Order having been received, the Board makes and enters the following:

FINDINGS OF FACT

I.

In September, 1972, appellant, under a contract with the Washington State Highways Department, was cleaning by sandblasting prior to painting the northbound segment of the Highway 99 bridge over the Snohomish River at Everett, Snohomish County. The operation caused sand dust to be airborne.

II.

On September 12, 1972, an inspector on respondent's staff observed that appellant's operation was causing sand dust darker in shade than No. 2 on the Ringelmann chart to be airborne for at least five minutes. He issued Notice of Violation No. 5952 to appellant, citing an alleged violation of Section 9.03 of respondent's Regulation I.

III.

Section 9.03 of respondent's Regulation I makes it unlawful to cause or allow the emission of an air contaminant darker in shade than No. 2 on the Ringelmann chart for more than three minutes in any hour.

IV.

No civil penalty was levied in connection with Notice of Violation

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 No. 5952. Appellant was informed by respondent of respondent's sand-
2 blasting guidelines which had been in effect since August, 1971. Appellant
3 contended that his contract required the use of sand and that wind made
4 the use of dust containing tarps dangerous.

5 V.

6 On September 18, 1972, the inspector revisited the bridge and
7 observed sand dust from appellant's operation darker in shade than
8 No. 2 on the Ringelmann chart for at least four minutes. He issued
9 Notice of Violation No. 5961 to appellant, citing an alleged violation
10 of Section 9.03 of respondent's Regulation I. In connection therewith,
11 Notice of Civil Penalty No. 474, in the maximum allowable amount of
2 \$250.00, subsequently was served on appellant. This penalty is the
3 subject of this appeal.

14 From these Findings, the Pollution Control Hearings Board comes
15 to these

16 CONCLUSIONS

17 I.

18 Appellant was in violation of Section 9.03 of respondent's
19 Regulation I on September 18, 1972.

20 II.

21 In view of the non-penalty "warning" violation (No. 5952) issued
22 six days earlier, Notice of Civil Penalty No. 474 in the maximum
23 allowable amount of \$250.00 is reasonable.

24 III.

5 Appellant's contention that it was required by contract with the
26 Washington State Highways Department to use a dust emitting product is

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 not a defense.

2 THEREFORE, the Pollution Control Hearings Board issues this

3 ORDER

4 Notice of Civil Penalty No. 474 is affirmed.

5 DONE at Lacey, Washington this 14th day of June, 1973.

6 POLLUTION CONTROL HEARINGS BOARD

7 Walt Woodward
8 WALT WOODWARD, Chairman

9 W. A. Gissberg
10 W. A. GISSBERG, Member

11 James T. Sheehy
12 JAMES T. SHEEHY, Member

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER